



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

APPLICANT(s): L. Janesky CONF. NO. 2118
SERIAL NO.: 10/785,303 ART UNIT: 3749
FILING DATE: 2/24/04 EXAMINER: Wilson,
 Gregory A.

TITLE: CRAWLSPACE FOUNDATION VENT COVERS
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Board of Patent Appeals and Interferences
United States Patent and Trademark Office
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NEW APPELLANTS' BRIEF

This is a reinstatement of appeal and is responsive to the rejection of the claims as stated in the Office Action dated December 29, 2006. A new Notice of Appeal is being filed herewith.

I. REAL PARTY IN INTEREST

The real party in interest in this Appeal is Lawrence M. Janesky.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

III. STATUS OF CLAIMS

Claims 1-8 are pending in the application. Claims 6-8 are withdrawn from consideration.

Claims 1-5 have been rejected.

The claims on appeal are 1-5.

IV. STATUS OF AMENDMENTS

There were no amendments to the claims subsequent to the rejection of December 29, 2006.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1 recites air vent covers (10) for attachment to crawlspace walls, over air vent openings, to enclose the air vent openings and seal them against the entry of air and humidity from the atmosphere into the crawlspace (Page 4, L. 28 - Page 5, L. 5; See Fig. 1). The air vent covers comprising rectangular panels (Page 6, L. 22 - Page 7, L. 1; Fig. 3, Ref. No. 10) molded from durable plastic composition (Page 7, L. 3-4) with a flat outer surface surrounded by a recessed peripheral border (See Fig. 4) provided with a plurality of holes (16) for

receiving attachment means for fastening the cover to a crawlspace wall (Page 7, L. 3-6, L. 13-16 and L. 17-29; Fig. 3). The rectangular panels also being molded with a recessed inner surface (13) surrounded by a projecting peripheral border, the recessed inner surface (13) being provided with projecting reinforcing ribs (14, 15) which extend across the width of the panels to reinforce the panels against warpage when they are fastened to the crawlspace wall (Page 7, L. 3-13).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Are claims 1-5 unpatentable under 35 U.S.C. 103 as being obvious over Crofoot, U.S. Patent No. 4,026,082 in view of Snyder, U.S. Patent No. 6,601,356 and Crute, Jr., U.S. Patent No. 2,834,278 ("Crute")?

VII. ARGUMENT

1. Claim 1

The combination of Crofoot, Snyder and Crute fails to disclose or suggest all of the features recited in claim 1. Claim 1 calls for air vent covers comprising rectangular panels with a flat outer surface surrounded by a recessed peripheral border provided with a plurality of holes for receiving attachment means for fastening the cover to a crawlspace wall. Claim 1 also calls for the rectangular panels being molded with a recessed inner surface surrounded by a projecting peripheral border where the recessed inner surface is provided with

projecting reinforcing ribs which extend across the width of the panels to reinforce the panels against warpage when they are fastened to the crawlspace wall. Neither Crofoot, Snyder nor Crute, individually or in combination, disclose or suggest these features.

Crofoot discloses a vent frame having a peripheral wall (1) encircling a rectangular opening. An external flange (2) projects outwardly from the outer end of the peripheral wall (1) and an internal flange (3) projects inwardly from the inner end of the peripheral wall (1) (Col. 2, L. 12-18). A sheet cover (10) (See Figs. 2 and 3) can be inserted into the vent frame. The cover has resilient marginal flanges (11) that fold toward the plane of the sheet (10). The flanges (11) have corner notches so that the flanges (11) swing away from the plane of the sheet (10). (Col. 3, L. 24-32). The cover (10) is pushed inwardly through the outer end of the peripheral wall (1) with the flanges (11) projecting outwardly such that the outer edges of the flanges (11) will engage the peripheral wall (1) first. As the cover (10) is pressed farther inward while being maintained parallel to the plane of the outer end of the peripheral wall (1), contact of the flanges with the peripheral wall (1) will fold the flanges progressively away from the plane of the cover sheet (10) until the roots of the flanges engage the peripheral wall (1) as shown in FIGS. 2 and 3 of Crofoot. Further movement of the cover (10) inwardly relative to the peripheral wall (1) is arrested and the resiliency of the flanges (11) provides a seal between the cover (10) and the peripheral wall (1) and will deter inadvertent movement of the cover outward toward the outer end of the peripheral wall. (Col. 3, L. 41-53).

Nowhere does Crofoot disclose or suggest an air vent cover comprising rectangular panels with a flat outer surface surrounded by a recessed peripheral border provided with a plurality of holes for receiving attachment means for fastening the cover to a crawlspace wall. Crofoot only discloses a cover (10) having folding flanges (11) for securing the cover (10) inside the vent frame and nothing more.

The flange portion of Crofoot referred to by the Examiner in the rejection of claim 1 is the flange (2) of the vent frame. This flange (2) of the vent frame does not mount the cover to the wall as suggested by the Examiner for the reasons described above (i.e. the cover is held in place by the folding flanges (11)). The peripheral border (1) referred to by the Examiner at page 3 of the office action as surrounding the cover (10) is part of the vent frame and not the cover (10). It is noted that the flanges (11) are not a recessed peripheral border as claimed by Applicant because the flanges (11) fold and are initially in the plane of the sheet cover (10).

Neither does Crofoot disclose or suggest that the cover (10) is molded with a recessed inner surface surrounded by a projecting peripheral border where the recessed inner surface is provided with projecting reinforcing ribs which extend across the width of the panels to reinforce the panels against warpage when they are fastened to the crawlspace wall as called for in Applicant's claim 1. The projecting ribs (4) referred to by the Examiner are not part of the cover (10) but are instead part of the peripheral wall (1) of the vent frame. The projecting ribs (4) are embedded into the poured concrete so that the vent frame is secured within the wall (Col. 3, L. 4-8). There is absolutely

no disclosure or suggestion in Crofoot that the sheet cover (10) has "projecting reinforcing ribs" as claimed in Applicant's claim 1.

Combining Snyder with Crofoot fails to remedy the above deficiencies. Snyder discloses a connector frame (10) for use as a support member for mounting grills at the ventilation openings of a building's heating, cooling and ventilation (HVAC) system (Col. 1, L. 14-18). Snyder is cited by the Examiner as disclosing a vent cover having a plurality of screw holes (105) in the flange portion of the frame (See page 3 of the office action). However, these screw holes (105) are not located in a vent cover. Rather these holes (105) are located on the connector frame (10) which allows for the mounting of a grill (32). There is absolutely no disclosure whatsoever in Snyder of a vent cover as recited in Applicant's claim 1. All that Snyder discloses is that a grill (32) (See Fig. 4) can be mounted on the connector frame (12) by a pair of threaded screws (33, 34). The screws (33, 34) pass through mounting holes (37, 38) in the grill (32) and are inserted into open apertures in the frame projections (21, 22). As can be seen in Figure 4, the grill (32) does not have a flat outer surface surrounded by a recessed peripheral border provided with a plurality of holes for receiving attachment means for fastening the cover to a crawlspace wall. The grill (32) has louvers for the passage of air and the holes (37, 38) are not located on a recessed peripheral border. Furthermore, there is no disclosure of the grill having reinforcing ribs as called for in Applicant's claim 1.

Combining Crute with Crofoot and Snyder fails to remedy the above noted deficiencies of Crofoot and Snyder. Crute discloses a vent closure having a flat closing wall portion (20) terminating at a peripheral edge (22) and a single central hole defined by sleeve (32), for mounting bolt (34) (Col. 2, L. 4-7 and L. 20-29; Fig. 2). The edge (22) or flange of Crute is not disclosed as having any holes whatsoever (See Figs. 1-2). Nowhere does Crute disclose or suggest a recessed peripheral border with a plurality of holes for receiving attachment means for fastening the cover to the wall as called for in claim 1. Furthermore, there is absolutely no disclosure of the vent closure having reinforcing ribs as claimed by Applicant. All that Crute discloses is that the sleeve (32) maintains the inner and outer wall portions in a spaced relationship upon tightening of the wing nut on the bolt (34) (Col. 2, L. 64-68).

Thus, for the reasons described above the combination of Crofoot, Snyder and Crute does not disclose or suggest air vent covers comprising rectangular panels with a flat outer surface surrounded by a recessed peripheral border provided with a plurality of holes for receiving attachment means for fastening the cover to a crawlspace wall and that the rectangular panels are molded with a recessed inner surface surrounded by a projecting peripheral border where the recessed inner surface is provided with projecting reinforcing ribs which extend across the width of the panels to reinforce the panels against warpage when they are fastened to the crawlspace wall. Therefore, claim 1 is patentable over the combination of Crofoot, Snyder and Crute and the rejection should be reversed

Moreover, it is respectfully submitted that there is no motivation to combine Crofoot, Snyder and Crute to obtain what is claimed in Applicant's claim 1. In order to establish a *prima facie* case of obviousness under 35 U.S.C. 103(a), there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. There must also be a reasonable expectation of success, and the reference(s), when combined, must teach or suggest all of the claim limitations. (See M.P.E.P. § 2142). As noted above, the combination of Crofoot, Snyder and Crute does not disclose or suggest each feature of Applicant's claims. Thus, a *prima facie* case of obviousness cannot be established.

Neither Crofoot, Snyder nor Crute provide any suggestion or motivation to be combined or modified as proposed by the Examiner and the Examiner's proposition that Applicant's invention would be obvious as recited in the claims is not supported by the factual contents of Crofoot, Snyder or Crute.

Crofoot is directed to a vent frame that is easy to assemble and install that can be anchored securely in a concrete form or in an aperture in a wood wall (Col. 1, L. 23-33). Crofoot also discloses a closure or sheet cover (10) for the vent frame that can be secured without fasteners (Col. 1, L. 34-38). The sheet cover (10) has folding flanges (11) for securing the cover (10) inside the peripheral wall (1) of the vent frame.

Snyder is directed to a connector frame (10) for mounting grills at the ventilation openings in a building's HVAC system (Col. 1,

L. 14-18). The grills used in Snyder are conventional louvered grills (32) that are secured by a pair of screws (See Fig. 4).

Crute discloses a vent closure having a flat closing wall portion (20) terminating at a peripheral edge (22) and a single central hole defined by sleeve (32), for mounting bolt (34) (Col. 2, L. 4-7 and L. 20-29; Fig. 2).

One skilled in the art would not be motivated to combine the sheet cover (10) with the folding flanges of Crofoot with the conventional louvered grill (32) of Snyder and the vent closure of Crute to obtain what is claimed by Applicant because as noted above the combination of these references do not disclose or suggest all the features of Applicant's claim 1.

Even if these references were combined the result would be the sheet cover (10) of Crofoot having the mounting holes (37, 38) of Snyder passing through the sheet cover (10) and the gasket (30) of Crute surrounding the periphery of the sheet cover (10). This is not what is claimed by Applicant.

Again claim 1 calls for air vent covers comprising rectangular panels with a flat outer surface surrounded by a recessed peripheral border provided with a plurality of holes for receiving attachment means for fastening the cover to a crawlspace wall and that the rectangular panels are molded with a recessed inner surface surrounded by a projecting peripheral border where the recessed inner surface is provided with projecting reinforcing ribs which extend across the width of the panels to reinforce the panels against warpage when they are fastened to the crawlspace wall.

When "the PTO asserts that there is an explicit or implicit teaching or suggestion in the prior art, it must indicate where such a teaching or suggestion appears in the reference". In re Rijckaert, 28 USPQ2d 1955, 1057 (Fed. Cir. 1993). The Examiner is requested to provide an indication as to where any such teaching, suggestion or motivation appears in the reference. Absent such a teaching, it is submitted that a *prima facie* case of obviousness over Crofoot, Snyder and Crute under 35 U.S.C. 103(a) is not established.

2. Claim 4

Claim 4 depends from claim 1 and is patentable at least for the reasons described above with respect to claim 1. Furthermore, claim 4 recites said reinforcing ribs project outwardly from the recessed surface of said cover a distance equal to the extent of the recess. The combination of Crofoot, Snyder and Crute fails to disclose or suggest this feature.

Crofoot is cited by the Examiner as having projecting ribs (4), but as noted above the ribs (4) are located on the vent frame and not the sheet cover (10). There is absolutely no disclosure or suggestion in any of the cited references that reinforcing ribs project outwardly from the recessed surface of said cover a distance equal to the extent of the recess. Therefore, claim 4 is patentable over the prior art and the rejection should be reversed.

3. Claim 5

Claim 5 ultimately depends from claim 1 and is patentable at least for the reasons described above with respect to claim 1. Moreover, claim 5 recites a pair of reinforcing ribs spaced from

each other by a distance of about 3". The combination of Crofoot, Snyder and Crute fails to disclose or suggest this feature.

As described above, Crofoot, Snyder and Crute do not disclose or suggest a vent cover with reinforcing ribs. Thus, the combination of Crofoot, Snyder and Crute cannot disclose or suggest a pair of reinforcing ribs spaced from each other by a distance of about 3". Therefore, claim 5 is patentable over the prior art and the rejection should be reversed.

The Commissioner is hereby authorized to charge payment for any additional fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,



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VIII. CLAIM APPENDIX

The texts of the claims involved in the appeal are:

1. Air vent covers for attachment to crawlspace walls, over air vent openings, to enclose said air vent openings and seal them against the entry of air and humidity from the atmosphere into the crawlspace, said air vent covers comprising rectangular panels molded from durable plastic composition with a flat outer surface surrounded by a recessed peripheral border provided with a plurality of holes for receiving attachment means for fastening the cover to a crawlspace wall, said rectangular panels also being molded with a recessed inner surface surrounded by a projecting peripheral border, said recessed inner surface being provided with projecting reinforcing ribs which extend across the width of the panels to reinforce the panels against warpage when they are fastened to the crawlspace wall.

2. Air vent covers according to claim 1 further comprising a sealing means bonded to the projecting peripheral border surrounding the recessed inner surface for providing a continuous seal between the border of the vent cover and the surface of a crawlspace wall to which the vent cover is fastened.

3. Air vent covers according to claim 2 in which the sealing means comprises a narrow plastic foam insulating tape adhered to the peripheral border of the vent cover.

4. Air vent covers according to claim 1 in which said reinforcing ribs project outwardly from the recessed surface of said cover a distance equal to the extent of the recess.

5. Air vent cover according to claim 4 comprising a pair of reinforcing ribs spaced from each other by a distance of about 3".

IX. EVIDENCE APPENDIX

Not applicable.

X. RELATED PROCEEDINGS APPENDIX

Not applicable.